

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:08CR244
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
JOHN S. BECK,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 36). The government adopted the PSR (Filing No. 34). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶¶ 44 (gun enhancement) and 64 (criminal history point).

¶ 44 - Gun Enhancement

The Defendant objects to the 2-level gun enhancement applied under U.S.S.G. § 2D1.1(b)(1). The objection will be heard at sentencing, and the government has the burden by a preponderance of the evidence.

¶ 64 - Criminal History Point

The Defendant objects to the criminal history point assessed in ¶ 64. Because the Defendant has only one criminal history point and 0-1 points govern his placement in Criminal History Category I, this objection has no effect on his sentencing guideline range. Therefore, the objection is denied.

IT IS ORDERED:

1. The Defendant's Objection to ¶ 44 (gun enhancement) of the Presentence Investigation Report (Filing No. 36) will be heard at sentencing;

2. The Defendant's Objection to ¶ 64 (criminal history point) of the Presentence Investigation Report (Filing No. 36) is denied;

3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 4 of this Order, my tentative findings may become final; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 29th day of January, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge